

May 10, 2017

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: WC Docket No. 17-108 - Restoring Internet Freedom

Dear Ms. Dortch:

On May 9, 2017, Josh Finestone of Navigators Global, Mark Rubin, Senior Executive, Government Relations, TracFone Wireless, Inc. (TracFone), and undersigned counsel for TracFone met with Nick Degani, Legal Advisor to Chairman Ajit Pai, and with Jay Schwarz, Wireline Advisor to Commissioner Pai.

During the meeting, we discussed the Commission's draft notice of proposed rulemaking to be considered in the above-captioned docket. Specifically, we discussed whether the proposed reclassification of Broadband Internet Access Service (BIAS) from Telecommunications Service subject to Title II of the Communications Act (Act) to Information Service subject only to Title I of the Act would have any impact on the Commission's authority to use Universal Service Fund resources to support BIAS through the Lifeline program. The Act affords the Commission broad authority to allow or require that the Lifeline program support BIAS without regard to whether BIAS is subject to Commission jurisdiction under Title I or Title II.

A starting point for this analysis is the Preamble to the Telecommunications Act of 1996 (Pub. L. 104-104, 110 Stat. 56 (1996)) (1996 Act). That Preamble states as follows:

AN ACT To promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and **encourage the rapid deployment of new telecommunications technologies**. (emphasis added).

The highlighted words from the Preamble are central to understanding the purposes and goals of the 1996 Act. There is no more appropriate way to encourage and hasten the deployment of new technologies (and services utilizing those new technologies) than to expand the base of users of services which utilize those technologies. Few, if any new technologies have had a more profound impact on consumers than the development and growth of Internet Protocol services. Central to that usage is BIAS – the ability to access the Internet and the myriad of information sources available over the Internet at high speeds. By modernizing the Lifeline program to support broadband, that important statutory purpose set forth in the Preamble will be advanced.

Moreover, the Commission's statutory authority to establish and modernize Lifeline derives from Section 254 of the Act (Universal Service). At Section 254(b) of the Act, Congress

articulated a series of universal service principles to govern the Commission's preservation and advancement of universal service. Among those universal service principles is the following:

- (2) ACCESS TO ADVANCED SERVICES. Access to advanced telecommunications and information services should be provided in all regions of the nation.

By explicitly describing advanced services to include telecommunications and information services, Congress established the Commission's authority and responsibility to preserve and advance access to BIAS without regard to whether BIAS is classified as a Telecommunications Service subject to Title II or an Information Service subject to Title I.

In addition, those statutory universal service principles include Section 254(b)(3) which provides that consumers throughout the nation "including low-income consumers" should have access to affordable telecommunications and information services. In the past, the Commission relied upon the Section 254(b)(3) reference to low-income consumers as part of its justification for the Lifeline program. The explicit reference to "information services" in Section 254(b)(3) indicates that the Commission's responsibility to ensure availability of affordable service throughout the nation to low-income consumers extends to telecommunications and information services. Accordingly, reclassification of BIAS as an information service subject to Title I would have no limiting impact on the Commission's authority to modernize Lifeline to support BIAS.

We also discussed the language contained in paragraph 68 of the draft notice of proposed rulemaking. Specifically, we discussed the sentence which states, in part, as follows: "... we propose requiring Lifeline carriers to use Lifeline support 'for the provision, maintenance, and upgrading' of broadband facilities capable of providing supported services." While the better view is that the quoted language from paragraph 68 expresses the Commission's intent that Lifeline providers use Universal Service Fund support to provide broadband **service**, some might misconstrue that statement as articulating a proposal to limit Lifeline support to providers who offer Lifeline service using their own broadband facilities. That would be in incorrect interpretation. In the Commission's 2005 memorandum opinion and order forbearing from the "owned facilities" requirement of Section 214(e)(1) of the Act, a unanimous Commission provided a cogent and detailed explanation as to why facilities ownership is not a necessary or appropriate requirement for a carrier which seeks Eligible Telecommunications Carrier designation only for the provision of Lifeline service. See Federal-State Joint Board on Universal Service (TracFone Wireless Petition for Forbearance), 20 FCC Rcd 15095 at ¶¶ 12-13. That explanation was appropriate then, and it remains appropriate today.

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Pursuant to Section 1.1206(b) of the Commission's Rules, this letter is being filed electronically. If there are questions, please communicate directly with undersigned counsel for TracFone.

Sincerely,



Mitchell F. Brecher

cc: Mr. Nick Degani
Jay Schwarz, Ph.D